BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-124-C - ORDER NO. 1999-497

JULY 19, 1999

IN RE: Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.	)	ORDER RULING ON REQUESTS FOR RECONSIDERATION AND CLARIFICATION

On April 19, 1999, the Public Service Commission of South Carolina ("Commission") issued Order No. 1999-285 captioned "Order Setting Rates for Payphone Lines and Associated Features" in the instant docket. Order No. 1999-285 set forth the Commission's determinations regarding revisions to BellSouth Telecommunications, Inc.'s ("BellSouth's") General Subscriber Services Tariff ("GSST") and BellSouth's Access Services Tariff.

Following the issuance of Order No. 1999-285, both BellSouth and the South Carolina Public Communications Association ("SCPCA") timely filed pleadings seeking either reconsideration, rehearing, or clarification of Order No. 1999-285. BellSouth filed a Motion for Reconsideration and/or Rehearing of Order No.1999-285 in which BellSouth requested reconsideration of several rulings of the Commission contained in Order No. 1999-285 or in the alternative requested that the Commission grant rehearing on the issues set forth in BellSouth's Motion. By its Petition for Clarification and

Rehearing or Reconsideration, the SCPCA requested that the Commission clarify certain matters addressed in Order No. 1999-285 and also requested that the Commission reconsider certain other matters addressed by Order No. 1999-285.

For the reasons set forth below, the Commission grants reconsideration in part and grants clarification in part.

BELLSOUTH'S MOTION FOR RECONSIDERATION AND/OR REHEARING

BellSouth requested reconsideration of several points made by the Commission in Order No. 1999-285. In the alternative, BellSouth requested that the Commission set this matter for rehearing on the issues specified for reconsideration. The issues raised by BellSouth are discussed separately below.

1. BellSouth asserts that the Commission erred in reducing the Public Telephone Access Service ("PTAS") rates. BellSouth argues that the matter before the Commission was not a rate case but was a determination of whether BellSouth's existing tariff's met the new services test.

The Commission finds the argument of BellSouth to be without merit and denies BellSouth's Motion for Reconsideration, or in the alternative Rehearing, as to this issue. From the outset of the instant docket, the Commission recognized, and by Commission Order gave notice to all parties, that refunds would be required to be made if any newly approved rates arising from this docket were lower than existing rates. In Order No. 97-367, dated May 2, 1997, the Commission granted a Motion of the SCPCA for a continuance. In that order granting a continuance, the Commission also granted a request of the SCPCA for "an accounting order requiring BellSouth to reimburse or provide credit to its payphone customers, from April 15, 1997, if any newly approved rates are lower than existing tariff rates." Order No. 97-367, p. 2. *See also,* Order No. 1999-285, p. 2. By Order No. 97-519 (dated June 16, 1997), the Commission, in denying a BellSouth Petition for Declaratory Order requesting that the Commission find that BellSouth's pay telephone rates as filed in tariffs on or before May 19, 1997 comply with the Federal Communication's Commission's ("FCC's") implementation of the Pay Telephone Reclassification and Compensation provisions of the Telecommunications Act of 1996 and that BellSouth's pay telephone rates have met the new services test, reiterated its holding from Order No. 97-367 by stating that "should this Commission determine that the actual rates are lower than those filed, BellSouth will be required to refund and provide credit to its payphone customers back to April 15, 1997." Order No. 97-519, p. 1-2; *See also*, Order No. 1999-285, p. 2. Thus the Commission finds that ample notice was provided to all parties of the possibility of rates being changed in the instant proceeding. Accordingly, the Commission finds BellSouth's exception without merit.

2. BellSouth next alleges error by the Commission in adopting the cost studies submitted by BellSouth in this docket to set the PTAS rate at $25.49. BellSouth asserts that the cost studies were submitted solely in support of the new services test and were not submitted to support BellSouth's PTAS rates or a change in the PTAS rates.

In Order No. 1999-285, the Commission made a specific finding that the cost studies submitted in the instant docket should be used to determine direct costs and shared and common costs in establishing rates for PTAS and associated features. Order No. 1999-285, p. 18, ¶2. In making this finding, the Commission recognized that the costing methodology asserted by BellSouth in the instant proceeding is based on a similar study used by BellSouth and adopted by this Commission in Docket No. 97-3740-C, the BellSouth UNE proceeding. Order No. 1999-285, p. 18, ¶3. Further, the Commission noted that both a witness for BellSouth and a witness for the SCPCA acknowledged that FCC mandates in the BellSouth UNE proceeding and the instant docket are substantially the same, that is to set rates that are cost based, just and reasonable, and non-discriminatory. Order No. 1999-285, p. 18, ¶3.

The Commission finds no error in its determination that the cost studies presented in this docket were appropriate cost studies on which to set rates. BellSouth's argument that the cost study was presented for the sole and limited purpose of demonstrating that BellSouth's existing PTAS rates met the new services test is without merit. BellSouth had the burden of showing that the rates for its payphone lines and unbundled features are priced at rates that are "cost based; consistent with the requirements of section 276 [of the Telecommunications Act of 1996] with regard, for example, to the removal of subsidies from exchange and exchange access services; nondiscriminatory, and in compliance with the FCC's *Computer III* tariffing requirements (the new services test). *See,* Order No. 1999-285, pp. 4-5, ¶4. BellSouth alone determined the type of cost study to present and now complains that the Commission has relied on that cost study in setting rates which the Commission determined to be cost based, in compliance with the mandates of the FCC and the 1996 Act, and which allow BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs." Order No. 1999-285, pp21, ¶8 and p. 25, ¶14.

It was incumbent upon BellSouth to demonstrate cost based rates in the instant proceeding. The Commission found that the cost studies presented by BellSouth justified rates which were different than the rates filed by BellSouth. BellSouth was certainly afforded the opportunity to explain its cost study and was even given the opportunity to attempt to quantify a higher cost. However, BellSouth could not meet its burden of justifying the high overhead costs above what the cost study showed.

Clearly the burden under the new services test is on the incumbent LEC to prove that its rates are cost based and do not recover more than a reasonable portion of its overhead costs. Based on the record before it, the Commission does not believe that BellSouth demonstrated that the rates as filed did not recover more than a reasonable portion of overhead costs. Witness Caldwell for BellSouth could not explain how the rate could be over \$25.49, the amount which was supported by the cost study. Other than to weakly offer that the difference between the \$25.49 and the requested \$45.75 was attributable to overhead costs such as retail cost and some additional shared and common costs, witness Caldwell could neither quantify an amount nor adequately explain any justification for a rate higher than \$25.49. Tr. pp. 133 – 138. Additionally, BellSouth witness Sanders could not demonstrate an acceptable level of overhead costs. Witness Sanders merely offered that BellSouth's cost/price ratios for PTAS rate levels fell within a range of cost/price ratios that have been accepted by the FCC in interstate filings. Tr. p. 44.

The Commission finds no error in its decision to use the cost studies presented herein as the guide for setting rates for PTAS. By offering the cost studies as support for meeting the new services test, BellSouth was required to offer cost based justification for the PTAS rate. In weighing the evidence presented, the Commission found that the evidence supported a different, and lower, rate than the rate filed by BellSouth. The Commission took a different view of the evidence presented by BellSouth, which happens to be a view that BellSouth does not like. A different view of the evidence does not constitute error.

3. BellSouth also alleges error by the Commission in setting BellSouth's PTAS rate, including blocking and screening, billed number screening, and usage, at $25.49.[1] BellSouth asserts that a PTAS rate of $25.49 is below BellSouth's total cost of providing PTAS and that the $25.49 rate includes only the defined shared and common costs typically used for pricing UNEs.

BellSouth asserts that its witness Caldwell testified that the TELRIC methodolgy used in the UNE docket (Docket No. 97-374-C) excludes all of BellSouth's retail costs associated with providing a service, such as its marketing, product management, project management, advertising, and sales costs. BellSouth further asserts that all such costs are incurred by BellSouth in the provision of PTAS. BellSouth also argues that Ms. Caldwell testified that the retail costs associated with providing PTAS would add additional costs to providing the service, and BellSouth further offers that witness Caldwell's testimony was uncontradicted by any witness.

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[1] In Order No. 1999-285, the Commission actually set the PTAS rate at $36.37, including the subscriber line charge ("SLC") of $8.14 and the primary interexchange carrier charge ("PICC") of $2.75. When the SLC and PICC are subtracted, the effective rate of the PTAS rate is $25.49. BellSouth challenges the inclusion of the federally mandated SLC and PICC charges as part of the intrastate tariffed rates for PTAS later in its Motion.

While witness Caldwell did testify that UNE study excluded retail costs, witness Caldwell also testified that the BellSouth calculation included a return on investment. TR. p. 95; 101. Thus the cost study for each PTAS line already includes a Commission approved return of 10.86% exclusive of any additional mark-up. Tr. p.133. Further, witness Caldwell was given the opportunity to quantify any additional cost to providing the PTAS line, and she could not do so other than to say that an additional six or seven dollars could probably be added for the retail costs. TR. pp. 133 –138. The Commission must have some basis for its decision, and since BellSouth had the burden of proving that the rates were cost based, it was incumbent upon BellSouth to provide the actual costs of providing PTAS for the Commission to consider, including retail costs or any other cost to be included in the PTAS rate. It appears to the Commission that BellSouth is alleging error for the Commission failing to included certain costs of PTAS when BellSouth did not provide specific and reliable evidence of those costs in its case in chief. Witness Caldwell was provided an opportunity to quantify an amount of costs such as retail and other costs incurred by BellSouth in the provision of PTAS, and she could not do so. Further, other than to offer that the cost/price ratios for PTAS rate levels fell within a range of cost/price ratios that have been accepted by the FCC in interstate filings, BellSouth witness Sanders offered no quantifiable amount of overhead costs to be included in the PTAS rate.

The Commission finds no error in its determination of the appropriate PTAS rate. The rate set by the Commission is based upon the cost study provided by BellSouth, and based upon BellSouth's own cost study, the rate set by the Commission is cost-based.

The Commission finds no error in refusing to add additional costs to the cost study to cover other costs alleged by BellSouth when such additional costs were neither quantified or specified.

4. Next, BellSouth maintains that the Commission erred in not recognizing the distinction between the pricing standards to be applied to a UNE versus a service. BellSouth argues that the $25.49 PTAS cost figure is based on the FCC's TELRIC methodology which is a costing methodology adopted by the FCC to price UNEs and is not intended to be used to set rates for tariffed services such as PTAS. In support of its position, BellSouth argues that using the UNE costs to price PTAS causes an inequitable result because PTAS is a tariffed service which must be made available for resale to CLECs at a 14.8% discount. BellSouth offers that there is essentially no difference in the resale rate for PTAS ($21.72) and the direct incremental cost of providing PTAS ($21.54), representing a .8% contribution toward shared and common costs and not recovering the retail costs or its fair share of the shared and common costs. The effect according to BellSouth is that the rate for PTAS established by Order No. 1999-285 results in BellSouth losing money every time it sells this service.

In support of its position, BellSouth notes that the FCC refused to apply the UNE costing and pricing standards set forth in Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") to Section 276 payphone services. (FCC report and Order, rel. Sept. 20, 1996, CC Docket No. 96-128, order No. 96-388, ¶ 147.) Specifically, the FCC stated:

> We decline to require, as proposed by AT&T, that the pricing regime under Section 251 and 252 apply to all Section 276

> payphone services offered by incumbent LECs. Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services. In addition, the elements and services to be offered under Sections 251 and 252 are not available to entities that are not telecommunications carriers, and many PSPs are not telecommunications carriers. in addition, Section 276 does not refer to or require the application of sections 251 and 252 to LEC payphone services.

Id. (footnote omitted). BellSouth further offers that the Commission's decision to price PTAS as a UNE is inconsistent with Section 276 of the 1996 Act and is inconsistent with the FCC's Payphone Orders implementing Section 276.

First, the Commission notes that while Section 276 does not require the pricing standards found in Sections 251 and 252, neither does Section 276 prohibit using the pricing standards of Sections 251 and 252. And while the FCC declined to apply the pricing standards of Sections 251 and 252 to Section 276 payphone services, the FCC did not bar state commissions from using those pricing standards.

Once again, this Commission recognizes that BellSouth, and BellSouth alone, determined the type of cost study to present in the context of this case. BellSouth states that it used the cost studies from the UNE docket because the Commission was familiar with those studies. But once the Commission determined that the PTAS rates charged by BellSouth were not supported by the evidence presented in this case, the Commission had to use the evidence presented by BellSouth to determine the appropriate cost-based rate for PTAS. The UNE cost studies presented by BellSouth was the only reliable evidence before the Commission upon which the Commission could rely to set cost based rates for PTAS. As BellSouth chose the type of cost study to present, it is not appropriate now for

BellSouth to claim that reliance on those cost-studies by the Commission in setting the rate is not proper. Based upon the evidence before it, the Commission finds no error in using the UNE cost studies as the basis for setting cost based rates for PTAS service.

To the extent that BellSouth is concerned that the resale rate of the PTAS service is essentially the same as the direct incremental cost of providing PTAS, the Commission amends Order No. 1999-285 to provide that PTAS service is not subject to the wholesale discount applied to services purchased for resale. In other words, the tariffed PTAS rates approved by the Commission in Order No. 1999-285, and affirmed herein, are not subject to the Commission approved wholesale discount if the PTAS service is purchased for resale.

5. BellSouth alleges error by the Commission in including the SLC and PICC charges in the PTAS rate of $36.37 established by Order No. 1999-285. BellSouth argues that the SLC and PICC are federally mandated charges that change over time and that as the charges increase, the effective PTAS rate decreases. BellSouth also expresses concern that as the SLC and PICC increase that the resulting resale rate of PTAS decreases.

In Order No. 1999-285, the Commission recognized that the purpose of the SLC and PICC is to recoup all or part of the local loop costs allocated to the interstate jurisdiction. Order No. 1999-285, pp. 23-24. Further, the Commission acknowledged that that the SLC and PICC are federally mandated charges which are not fixed amounts but are the product of a calculation which may vary from year to year. Order No. 1999-285, p. 24. In rejecting the argument of the SCPCA that giving BellSouth full compensation for its interstate costs while at the same time allowing BellSouth to collect additional rate elements such as the SLC and PICC would give BellSouth a double-recovery of its interstate costs associated with payphone lines, the Commission found that a fixed reduction of the rate of PTAS lines by the SLC and PICC as proposed by the SCPCA would not be appropriate. Order No. 1999-285, p. 24, ¶ 13. The Commission also found that a rate of $36.37 for PTAS lines including the SLC and PICC will allow BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs as well as the federally-mandated SLC and PICC. Order No. 1999-285, pp. 24-25. The Commission discerns no error in its initial ruling to include the SLC and PICC in the rate established for PTAS.

To the extent that BellSouth is concerned that utilizing the current SLC and PICC rates results in a resale rate of PTAS that is only seven cents more that BellSouth's direct incremental cost of providing PTAS, the Commission has ordered herein that PTAS service is not subject to the Commission approved wholesale discount if purchased for resale.

6. Next BellSouth asserts the Commission erred when the Commission assessed interest on refunds. BellSouth argues that there is no evidence of record to provide for interest on refunds nor is there a provision for interest to be paid in the FCC's order granting the LECs a limited waiver on the new services test requirement for payphone services. BellSouth also argues that the Commission's regulations do not provide for the payment of interest in a situation such as the case at bar. BellSouth suggests that requiring it to pay interest on refunds or credits on the difference between

the prior PTAS rates and the new PTAS rate is unduly burdensome and prejudicial as well as contrary to this Commission's own regulations.

The Commission agrees with BellSouth that interest should be excluded from the refund calculations ordered in this docket. The Commission is of the opinion and so finds that inclusion of interest in the refund calculation would be unfair and inappropriate under the instant fact situation. The FCC's order granting LECs a limited waiver on the new services test requirements for payphone services did not include a provision for interest. Furthermore, the Commission agrees with BellSouth that it would be unfair to assess interest when the hearing in this matter was continued two times, which would have the effect of increasing any interest assessed. Therefore, the Commission hereby grants BellSouth's request for reconsideration on the interest issue, and the Commission finds that interest should be excluded from the refund calculations in this docket.

7. Finally, BellSouth requests that the Commission reconsider the time period within which BellSouth must provide any ordered refunds or credits. BellSouth requests that it be allowed until after August 15, 1999, rather than 60 days from receipt of the Order in which to provide any ordered refunds or credits.

Upon consideration of this issue, the Commission denies BellSouth's request and finds that sixty days from receipt of the Order is sufficient time in which to make the required refunds.

SCPCA'S PETITION FOR CLARIFICATION AND REHEARING OR RECONSIDERATION

The SCPCA by its Petition requested that the Commission clarify certain points in Order No. 1999-285 and also requested that the Commission grant reconsideration or rehearing on two points. The issues raised by the SCPCA are discussed below.

A. Rehearing or Reconsideration

1. The SCPCA requests that the Commission reconsider its decision not to set a rate of $25.49, including the SLC and PICC. The SCPCA asserts that the Commission's decision to add the SLC and PICC to the rate of $25.49 gives BellSouth a double recovery. The SCPCA argues that the postponement of the Universal Service Fund hearing presents sufficient cause for the Commission to eliminate all subsidies from the PTAS rate and to set the rate at $25.49, which would allow BellSouth to recover its direct and overhead cost, a reasonable return on investment, and no more. Petition, pp. 11-12, ¶18.

In Order No. 1999-285, the Commission, in rejecting the identical proposal raised here by the SCPCA, found that it is not appropriate to offset such rates by the SLC and PICC. Order No. 1999-285, p. 23, ¶ 12. The Commission further recognized that the purpose of the SLC is to recoup part or all of the local loop costs allocated to the interstate jurisdiction and that to the extent the SLC does not recover all of the interstate loop costs, the remaining costs are recovered by means of the PICC. Order No. 1999-285, pp. 23-23, ¶ 13. Finally, the Commission declined to adopt the identical proposal of the SCPCA in Order No. 1999-285 as the Commission found that the SLC and PICC were federally mandated charges which may vary from year to year, and the Commission stated that a fixed reduction of the rate for PTAS by the SLC and PICC would not be appropriate. Order No. 1999-285, p. 24, ¶ 13.

By its request for reconsideration, the SCPCA has not presented any new ground or rationale for the Commission to reconsider its previous position. The Commission recognizes that the SLC and PICC are set to recover a portion of the local loop costs assigned to the interstate jurisdiction and that the SLC and PICC do not recover the entire cost of the loop. As the SLC and PICC do not recover the entire cost of the loop and as the SLC and PICC may vary from year to year, the Commission reiterates that a fixed reduction of the PTAS rate by the SLC and PICC would not be appropriate. Thus, the Commission finds no error in its earlier ruling of refusing to set the PTAS rate at $25.49 inclusive of the SLC and PICC.

2. The SCPCA asserts error by the Commission in finding that BellSouth's asserted loop cost reflecting a 47% residence/53% business mix is the appropriate loop cost to apply to the PTAS rate. Order No. 1999-285, p. 19, ¶ 6. The SCPCA argues that the loop costs for the PTAS line are similar to those of a business loop and the fact that payphone can be found in rural areas and residential areas does not change the business nature of their loops. Petition, p. 13. The SCPCA also argues that BellSouth refuses to install a PTAS line at a non-business location and therefore the payphone loop should reflect a 100% business/0% residential mix.

The Commission finds no error in its decision to utilize the asserted loop cost proposed by BellSouth reflecting a 47% residence/53% business mix. Even assuming as the SCPCA argues that a payphone line would not be installed at a residential address the Commission does not find that such a factor would invalidate the mix utilized by BellSouth and approved by the Commission. The evidence of record clearly establishes that the loop length is a major driver of the cost of providing PTAS. Tr., pp. 128-129; 288. BellSouth's sampling of PTAS lines indicated that the loop length resulted in the 47% residential/53% business mix. Tr., pp. 129. As the loop length is a major driver of the cost of PTAS, the Commission believes it appropriate to use the actual loop length, as supported by the sampling of PTAS lines, in determining the cost based rate of PTAS. The Commission believes that the loop length of 47% residential/53% business mix is fair and reasonable and that it will fairly compensate for the loop cost of providing PTAS. Thus, the Commission finds no error in its earlier decision to use this loop cost.

B. Clarification

1. The SCPCA seeks clarification of Order No. 1999-285 with respect to BellSouth providing refund or credits within sixty days of receipt of this Order No. 1999-285, and the SCPCA seeks clarification that the refunds apply to all PTAS customers regardless of the rating option chosen by the customer.

To the extent that Order No. 1999-285 suggested that credits would be an appropriate option by which BellSouth could effectuate the refund provision of the Order, the Commission hereby expressly overrules that previous directive and clarifies Order No. 1999-285 by ordering that a refund shall be provided to all pay phone service providers within sixty (60) days of receipt of the Commission's Order on Reconsideration and Clarification. Further these refunds shall be in the form of checks issued to all payphone service providers for the difference between the Commission approved PTAS rate and the rates paid for PTAS service back to April 15, 1997.

In addition, the aforementioned refund shall apply to all payphone service providers who have subscribed to basic PTAS service as well as shall apply to those payphone service providers who have subscribed to the Area Plus Option as provided for in Section A7.4.5 of the PTAS tariff.

2. The SCPCA requests that the Commission set an exact formula for calculating refunds. In Order No. 1999-285, the Commission ordered BellSouth "to provide a refund or credit to its PSP customers in an amount equal to the difference between the rates approved herein and those rates PSPs actually paid, including any SLC and PICC, from April 15, 1997, until the date BellSouth places its new rates into effect." Order No. 1999-285, pp. 29-20, ¶ 6. The Commission believes that BellSouth will be able to determine the appropriate amount of refund to provide to each PSP based on the directive of the Commission from Order No. 1999-285. The formula suggested by the SCPCA in its Petition appears to offset the rates by the SLC and PICC which the Commission declined to do in Order No. 1999-285 and again declined to do in the instant Order. The Commission finds no need to further address this issue than as set forth in Order No. 1999-285 and amended herein to expressly exclude the use of a credit to carry out the refund.

CONCLUSION

For the reasons set forth herein, the Commission grants reconsideration in part and grants clarification in part.

IT IS THEREFORE ORDERED THAT:

1. Order No. 1999-285 is reconsidered and amended to provide that the PTAS rates as approved in Order No. 1999-285 and affirmed herein are not subject to the Commission approved wholesale discount if purchased for resale.

2. BellSouth's request that interest be excluded from the refund calculation is granted for the reasons stated herein.

3. Order No. 1999-285 is clarified to provide that refunds shall be provided to all pay phone service providers within sixty (60) days of receipt of the Commission's Order on Reconsideration and Clarification. Further these refunds shall be in the form of checks issued to all payphone service providers for the difference between the Commission approved PTAS rate and the rates paid for PTAS service back to April 15, 1997.

4. Order No. 1999-285 is further clarified to provide that the aforementioned refund shall apply to all payphone service providers who have subscribed to basic PTAS service as well as shall apply to those payphone service providers who have subscribed to the Area Plus Option as provided for in Section A7.4.5 of the PTAS tariff.

5. All other portions of BellSouth's Motion for Reconsideration and/or Rehearing of Order No.1999-285 and of the SCPCA's Petition for Clarification and Rehearing or Reconsideration are denied.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Philip T. Bradley
Chairman

ATTEST:

Gary E. Walsh
Executive Director

(SEAL)